United States District Court
For the Northern District of California

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6   IN THE UNITED STATES DISTRICT COURT

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8   FOR THE NORTHERN DISTRICT OF CALIFORNIA

9   NUANCE COMMUNICATIONS, INC. A
     Delaware corporation,
10   No. C 08-02912 JSW
                 Plaintiff,
11   **TENTATIVE RULINGS AND
        v.   QUESTIONS RE CLAIM
12   CONSTRUCTION**
     ABBYY SOFTWARE HOUSE, INC., a
13   California corporation, and LEXMARK
     INTERNATIONAL, INC., a Delaware
14   corporation,

15   Defendants.

16   _____/

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18   TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE

19   NOTICE OF THE FOLLOWING TENTATIVE RULING AND QUESTIONS FOR THE

20   HEARING SCHEDULED ON JUNE 14, 2011, AT 1:00 p.m.:

21   The Court has reviewed the parties' briefs and, thus, does not wish to hear the parties

22   reargue matters addressed in those pleadings. If the parties intend to rely on legal authorities

23   not cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these

24   authorities reasonably in advance of the hearing and to make copies available at the hearing. If

25   the parties submit such additional authorities, they are ORDERED to submit the citations to the

26   authorities only, without argument or additional briefing. *Cf.* N.D. Civil Local Rule 7-3(d).

27   The parties will be given the opportunity at oral argument to explain their reliance on such

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1   authority. The Court suggests that associates or of counsel attorneys who are working on this

2   case be permitted to address some or all of the Court's questions contained herein.

3   The parties shall each have 90 minutes to present their respective arguments on claim

4   construction. The Court provides its tentative constructions of the first eight terms, found in the

5   '342 and '489 Patents.

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7   **1.   "Template"**

8   The Court **tentatively adopts** Nuance's construction: "A representation of the patterns,

9   shapes, or images of a character."

10   The Court finds no reason to overcome the presumption of claim differentiation or to

11 render the dependent claims in the patents superfluous or redundant. The specification permits

12 for an allowance that characters may be within predetermined tolerances, but does not require

13 that they be either in the must-be-off or must-be-on patterns.

14   What is Abbyy/Lexmark's best argument to overcome this presumption?

15   **2.   "Character"**

16   The Court **tentatively adopts** Abbyy/Lexmark's construction: "A character is a single,

17 individual symbol from a known set of symbols, not joined with any other symbol, identifiable

18 as such by a segmentation process. Examples of characters are letters, numerals and special

19 numbers such as commas, quotation marks and semicolons."

20   The patents explicitly describe the parsing process to render segments of a line of text

21 into individual characters, which are meant to be both individual and isolated. (*See* '342 Patent

22 at 4:25-27; 15:61-62; '489 Patent at 4:27-29, 16:31-32.) In the section of the '342 Patent

23 addressing the instance in which the invention mistakenly grabs the term 'ite' instead of its

24 composite letters, the patent describes the use of templates of single, individual characters to

25 identify single characters by parsing the segment into the characters 'i' and then 't' and

26 following. (*See* '342 Patent at 24:29-49.) This process, therefore, discloses methods to and

27 systems that recognize characters as individual, isolated symbols.

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1   What is Nuance's best argument in support of the term including multiple letters, digits
2 or symbols?

3   **3.   "Identifying"**

4   The Court **tentatively adopts** Nuance's construction: "Identifying."

5   The term identifying appears throughout portions of the patents that do not allude to the
6 specific processing and may be analyzed according to any one of a number of techniques.
7 Therefore, the Court does not find it persuasive to limit the construction of the term to only
8 either feature analysis of template analysis.

9   Why should the Court limit the construction to only two options as proposed by
10 Abbyy/Lexmark?

11   **4.   "Shape characteristics"**

12   The Court **tentatively proposes** the following construction: "Features of characters."

13   Why should the Court read the limitations into its construction? Does the Court's
14 proposed construction, taken from Abyyy/Lexmark's responsive brief, more aptly define the
15 disputed term?

16   **5.   "Feature analysis"**

17   The Court **tentatively adopts** Nuance's construction: "Recognizing a character in an
18 image by routines that extract features of the character and analyze the features."

19   In the specification, in a heading entitled "FEATURE ANALYSIS," the patent sets out
20 that "[t]he preferred embodiment of the present invention discloses a plurality of routines for
21 analyzing the features of images passed as input to the feature analysis process," with each
22 routine called an "isit ... (e.g., 'is it' an a)." ('342 Patent at 19:37-45.) An isit can be
23 implemented in a variety of ways, not just using the polygon fitting and the delineated statistical
24 information in Abbyy/Lexmark's restrictive construction. (*See id*. at 23:18-30.)

25   Why should the Court read the limitations into its construction?

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<div style="writing-mode: vertical">**United States District Court** For the Northern District of California</div>

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6.   "Template matching"

2   The Court **tentatively adopts** Nuance's construction: "A character recognition process

3   in which representations of the patterns, shapes, or images of an unknown character are

4   compared with previously generated representations of the patterns, shapes, or images of known

5   characters."

6   Why should the Court read the limitations into its construction?

7   **7.   "Second character recognition process"**

8   The Court **tentatively adopts** Nuance's construction, with a grammatical correction: "A

9   process for recognizing a character that is different from the first character recognition process."

10   How does Abbyy/Lexmark's proposed construction not render meaningless independent

11   claims 7 and 13 of the '342 Patent?

12   **8.   "Portion of said image"**

13   The Court **tentatively adopts** Nuance's construction: "Portion of said image."

14   How does Abbyy/Lexmark's proposal account for the figures and the language in Claim

15   18 that indicates that the portion of the image includes a representation of said character? ('342

16   Patent at Figs. 3(a) and 3(b) and at 6:10-18; 30-28-31.)

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18   The Court queries whether the parties have resolved their differences with regard to the

19   remaining three terms, found in the '009 Patent.

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21   **IT IS SO ORDERED.**

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23   Dated: June 13, 2011   _____

24   JEFFREY S. WHITE
                                                             UNITED STATES DISTRICT JUDGE

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